IN THE

Supreme Court of the United States

No. 76-1164

Term, 1977

JEFFREY PETER SNYDER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit.

Opinions Below

The decision of the Court of Appeals is not yet reported. It is set out in the Appendix, *infra,* at pages 12-15. There was no written opinion given in the District Court. The Third Circuit Court of Appeal Judgment Order dated January 11, 1977, affirming the District Court's judgment and its Order dated January 24, 1977, denying a reargument and reaffirming the District Court's judgment.

Statement of Jurisdiction

28 U.S.C.A. 1254(1) confers jurisdiction on this Court. Jurisdiction is further based on United States Court of Ap-

peals for the Third Circuit has ". . . decided an important question of federal law which has not been, but should be, settled by this court . . ."

Questions Presented

1. Whether the Court erred in instructing the jury, as to all four counts of the indictment, that it was immaterial whether or not the petitioner had knowledge, at the time the federal agents presented themselves before him, that such persons were officers of the United States.

2. Whether the Court erred in failing to dismiss Count Four of the indictment, when the Government's evidence as to Count Four did not prove beyond a reasonable doubt that petitioner violated Section 1501 of Title 18, United States Code, but merely demonstrated that petitioner fled from certain federal agents.

3. Whether the Court erred in failing to dismiss Counts Two and Three of the indictment, or in refusing to render directed verdicts in favor of petitioner, where both counts involved conduct of the petitioner constituting a single act or transaction upon which petitioner's conviction for the First Count of the indictment rested, in violation of petitioner's Fifth Amendment right to be protected from double jeopardy.

Statement of the Case

Petitioner, Jeffrey Peter Snyder, was charged in a four count indictment with forcibly assaulting an officer of the United States, forcibly resisting, opposing, impeding, intimidating and interfering with an officer of the United States, using force and threats of force to intimidate and impede officers of the Internal Revenue Service, and knowingly

and willfully obstructing, resisting, or opposing officers of the United States while the officers were attempting to execute a warrant of arrest, in violation of Sections 111 and 1501 of Title 18 and of Section 7212 (a) of Title 26, United States Code. Petitioner's motions to dismiss counts 2, 3, and 4 of the indictment, and motions for directed verdicts as to counts 2 and 3 were denied. Petitioner was found guilty on all four counts, and was sentenced. Petitioner's motion for a new trial was also denied. This appeal is taken from the final sentence entered July 23, 1976.

A summary of the relevant facts shows that on the morning of April 22, 1976, Jeffrey Snyder responded to two persons knocking at the door of his residence located at 6521 Darlington Road, Pittsburgh, Pennsylvania. According to Snyder the individuals did not identify themselves to him in any manner, and thus he was unaware that the individuals were agents of the Internal Revenue Service. Snyder went upstairs to summon a friend whom Snyder thought was to travel to school with the two persons who had come to the house. Snyder's friend, Keith Miller, went downstairs, and Snyder followed shortly thereafter and observed one of the individuals handing a piece of paper to Miller. Snyder asked the two persons to leave the residence, they proceeded to leave, and Snyder apparently placed his hand on the back of the neck of Special Agent Parks and escorted her to the door believing these individuals were not privileged to remain on the premises (Tr. Pg. 7-16, 20-21, 31-32, 43-48, 286-292, 307-312).

On the evening of April 22, 1976, Snyder was driving by 6521 Darlington Road when he observed three individuals standing near an automobile parked in front of the residence. Snyder proceeded in his car farther down the road, and short-

ly thereafter, a green automobile stopped next to his and the federal agents in the car apprehended him. Snyder asserts that at no time did any one of the three individuals identify himself as a federal agent by displaying a badge or by any other manner (Tr. Pg. 104-114, 131-138, 315-319).

Jurisdiction of the Third Circuit Court of Appeals was invoked pursuant to 28 U. S. C. 1291, in that the appeal was from a final judgment of the District Court for the Western District of Pennsylvania.

REASONS FOR GRANTING THE WRIT

There are three issues which counsel seeks to assert in the appeal of this case: (1) that the Court erred in instructing the jury, as to all four counts of the indictment, that it was immaterial whether or not the petitioner had knowledge, at the time the federal agents presented themselves before him, that such persons were officers of the United States; (2) that the Court erred failing to dismiss Count Four of the indictment, when the Government's evidence as to Count Four did not prove beyond a reasonable doubt that petitioner violated Section 1501 of Title 18, United States Code, but merely demonstrated that petitioner fled from certain federal agents; (3) that the Court erred in failing to dismiss Counts Two and Three of the indictment, or in refusing to render directed verdicts in favor of petitioner, where both counts involved conduct of the petitioner constituting a single act or transaction upon which petitioner's conviction for the First Count of the indictment rested, in violation of petitioner's Fifth Amendment right to be protected from double jeopardy.

1. The Court erred in instructing the jury, as to all four counts of the indictment, that it was immaterial whether or not the petitioner had knowledge, at the time the federal agents presented themselves before him, that such persons were officers of the United States.

The trial judge erroneously stated in his charge to the jury that as to all four counts in the indictment it was immaterial whether or not the petitioner had knowledge, at the time the federal agents presented themselves before him, that such persons were officers of the United States. It has been a general rule since *Pettibone vs. U. S.*, 13 S.Ct. 542, 148 U. S. 197, 37 L.Ed 419 (1893) that the prosecution must allege and prove knowledge on the part of the petitioner that those persons whom he endeavored to improperly influence, intimidate or impede were federal officers engaged in the performance of their duties.

With regard to specific sections of the U. S. Code contained in the several counts of petitioner's indictment, Title 26 U.S.C. § 7212(a) definitely requires knowledge of the federal agents' identity as an officer as an element of the offense set forth in that section. *U. S. vs. Rybicki*, 403 F.2d 599 (C.A. 6, 1968) stated clearly that the district judge's failure to instruct the jury that the petitioner, who was charged with obstructing the administration of internal revenue laws (26 U.S.C. § 7212(a)), had to know that men who were seizing his property were internal revenue agents, was a failure constituting plain error and resulted in the reversal of petitioner's conviction. This position has been adopted in the 3rd Circuit in *U.S. vs. Johnson*, 462 F.2d 423 (C.A. 3, 1972) as to Section 7212(a).

As to count four of the indictment, involving 18 U.S.C. § 1501, the case of *Sparks vs. United States*, 90 F.2d 61 (C.A. 6,

1937) held that the statutory predecessor of Section 1501—18 U.S.C. § 245—required that in a trial for resisting an officer of the United States it must be shown that the person resisted was an officer, and that the accused was aware of that fact.

While *U.S. vs. Johnson, supra,* has decided for the 3rd Circuit that in a prosecution under 18 U.S.C. § 111, (counts 1 and 2 of petitioner's indictment) specific knowledge of the victim's status as a federal officer is not an essential element of the crime, the cases of *U. S. vs. Perkins,* 488 F.2d 652, (C.A. 1, 1973), *U. S. vs. Goodwin,* 440 F.2d 1152 (C.A. 3, 1971), and even the recent U. S. Supreme Court case of *U. S. vs. Feola,* 420 U. S. 671, 95 S.Ct. 1255, 43 L.Ed.2d 541 (1975) suggest that qualifications ought to be applied to this general position.

The *Feola* case concurs with the *Johnson* decision that in general, scienter is not an element of this particular statutory offense; yet the Supreme Court has noted certain exceptional circumstances where knowledge of the federal agents' status is determinative:

> "We are not to be understood as implying that the defendant's state of knowledge is never a relevant consideration under § 111. The statute does require a criminal intent, and there may well be circumstances in which ignorance of the official status of the person assaulted or resisted negates the very existence of mens rea. For example, where an officer fails to identify himself or his purpose, his conduct in certain circumstances might reasonably be interpreted as the unlawful use of force directed either at the defendant or his property. In a situation of that kind, one might be justified in exerting an element of resistance, and an honest mistake of fact would not be consistent with criminal intent."

The petitioner, not having been made aware at the time that the persons inside his residence were in fact federal agents,

employed reasonable force to remove them from the premises.

U.S. vs. Goodwin, supra, follows the *Feola* position, that in a Section 111 prosecution the defendant may cast doubt upon the existence of *mens rea* by showing that, under the circumstances, he reasonably believed the facts to be other than they were and that his actions would have been innocent had his belief been correct, with the burden on the prosecution to remove such doubt by offering evidence to disprove the mistake of fact.

For the foregoing reasons, petitioner submits that the instructions to the jury to the effect that knowledge of the status of the federal agents was immaterial, is erroneous as to all four counts of the indictment.

2. The Court erred in failing to dismiss Count Four of the indictment, when the Government's evidence as to Count Four did not prove beyond a reasonable doubt that appellant violated Section 1501 of Title 18, United States Code, but merely demonstrated that petitioner fled from certain federal agents.

It is undisputed in the record that on the evening of April 22, 1976, petitioner did not assault, beat or wound any officer of the United States. Taking the evidence presented in a light most favorable to the prosecution, it is clear that petitioner did not obstruct, resist or oppose any officer of the United States, but on that same evening merely fled in a vehicle from the federal agents involved. Thus, the prosecution has failed to prove an essential element of the offense charged in Count Four of the indictment, that petitioner committed acts proscribed by Section 1501 of Title 18 of the United States Code.

In *Miller vs. U. S.*, 230 F.2d 486 (C.A. 5, 1956) it was held in a prosecution under 18 U.S.C. § 1501 for knowingly and wilfully obstructing, resisting and opposing a Deputy United States Marshall in his effort to serve a subpoena on a bank robbery witness, that where the defendant had harbored the witness for several days, had denied a deputy's first request to be admitted to her home when informed that he had no search warrant, and had denied the presence of the wanted witness although the deputy knew her to be lying, the conduct of the defendant was insufficient to warrant her conviction. The *Miller* court stated:

> ". . . we are emphatic in our view that certainty in the nature of criminal offenses forbids . . . the use of this section [18 U.S.C. § 1501] as a catchall to make crimes out of actions which law-enforcing agents may feel to be undesireable, but which Congress has not seen fit to proscribe." (page 488).

The case of *U.S. vs. Cunningham*, 509 F.2d 961 (C.A.D.C., 1975), while concerned with a related offense (18 U.S.C. § 111), describes activities that fall outside the scope of illegal conduct in dealings with officers of the United States:

> "It is clear that all failures to cooperate with federal agents are within the statute's prohibition, and that some measure of presently applied force is required. Threats of the future use of force are not enough, *United States v. Glover*, 321 F.Supp. 591 (E.D.Ark. 1970), nor is mere deception of a federal agent, *Long vs. United States*, 199 F.2d 717 (4th Cir. 1952), nor, presumably, would be the mere refusal to unlock a door through which federal agents sought entrance. *Cf. District of Columbia vs. Little*, 339 U.S. 1, 70 S.Ct. 468, 94 L.Ed. 599 (1950) (construing District of Columbia regulation outlawing the 'interfering with or preventing [of] any inspection' by a health officer."

It has been the position of several state courts, including Pennsylvania's, that no offense of obstructing or interfering with an officer in the performance of his duty is committed by the act of a person in running away from an officer who is attempting to arrest that person (67 C.J.S. 52, 44 A.L.R.3d 1018).

3. The Court erred in failing to dismiss Counts Two and Three of the indictment or in refusing to render directed verdicts in favor of petitioner where both counts involved conduct of the petitioner constituting a single act or transaction upon which petitioner's conviction for the First Count of the indictment rested, in violation of petitioner's Fifth Amendment right to be protected from double jeopardy.

Petitioner submits that his trial and conviction on the three counts concerning the events of the morning of April 22, 1976 (two counts involving 18 U.S.C. § 111, one count involving 26 U.S.C. § 7212 (a)) violates his Fifth Amendment right not to be placed in jeopardy twice for the same offense. The above three counts involve the same transaction, and the convictions on all three counts were based on the same evidence presented at trial. *U.S. vs. One Dodge Sedan*, 113 F.2d 552 (C.A. 3, 1940).

Taking the evidence presented in a light most favorable to the prosecution, the testimony given concerning the events of the morning of April 22, 1976 (Tr. Pg. 7-16, 20-21, 31-32, 43-48) shows that at most petitioner on a single occasion applied physical force to Special Agent Parks by placing his hand on the back of her neck and escorting her to the door after the summons had been served by the Special Agents. The record reveals that petitioner did not forcibly assault Agent Parks at any other time, nor did he assault any other officer of the

United States, did not obstruct or impede these agents by preventing their entrance or exit from the building, nor did in any other way interfere with their official duties. Thus petitioner's convictions on the first three counts in the indictment rest on a single physical act, which act was considered sufficient proof to return a conviction on each of the three indictments. Offenses are the same for the purposes of double jeopardy protection when evidence required to support conviction upon one of them would have been sufficient to warrant conviction upon the other. *U.S. vs. Mallah,* 503 F.2d 971 (C.A. N.Y., 1974).

Vile or obscene language which the evidence shows was employed by petitioner during this morning incident does not constitute conduct of a nature serious enough to warrant a conviction for forcibly assaulting or for forcibly resisting, opposing, impeding, intimidating or interfering with an officer of the United States (18 U.S.C. § 111), nor does such language constitute the offense of using force or threats of force to impede or intimidate any officer acting on behalf of the Internal Revenue Service (26 U.S.C. § 7217 (a)). The word "forcibly" as used in Section III refers to the string of verbs following it and not merely to the first verb "assaults"; obscene language alone has no characteristics of force. *Long vs. U.S.,* 199 F.2d 717 (C.A. 4, 1952). To convict under any portion of Section III requires proof of an ability to inflict harm, not merely proof of an interference with the performance of a duty. *U.S. vs. Johnson,* 462 F.2d 423 (C.A. 3, 1972).

The *Johnson* case cited above involves a defendant whose convictions on two of three counts (identical to the first three counts brought against appellant) were affirmed on appeal, and whose double jeopardy argument was rejected by the Court of Appeals. The instant appeal is distinguishable, however, on the basis that Johnson was found to have

engaged in two distinct acts that were the separate facts necessary to sustain multiple convictions. Where Johnson was shown to have physically assaulted officers of the Internal Revenue Service *and* physically obstructed their access to a building, petitioner was found only to have physically assaulted one federal agent. Thus, in the *Johnson* case separate and distinct facts were available upon which multiple charges could be brought and sustained, whereas petitioner's convictions on the first three counts in the indictment improperly rested upon a single factual episode, violating petitioner's Fifth Amendment guarantee against the hazards of double jeopardy.

Conclusion

WHEREFORE, Snyder respectfully requests the Court to reverse the judgment of conviction and to dismiss the indictment, or in the alternative to remand the case to the District Court for a new trial.

Respectfully submitted,

VINCENT C. MUROVICH,
Attorney for the Petitioner—
Jeffrey Peter Snyder.

APPENDIX

Judgment Order Dated January 11, 1977

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 76-2005

UNITED STATES OF AMERICA,
v.
JEFFREY PETER SNYDER,
Appellant.

(D. C. Crim. No. 76-95)

Appeal From the United States District Court for the Western District of Pennsylvania

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Submitted Under Third Circuit Rule 12(6)
January 10, 1977

Before GIBBONS and GARTH, *Circuit Judges,*
and COHEN*, *District Judge.*

Larry P. Gaitens, Esquire, Lucchino, Gaitens & Hough, Suite 1204, Lawyers Building, Pittsburgh, Pennsylvania 15219, Attorney for Appellant.

Blair A. Griffith, United States Attorney, John Paul Garhart, Asst. United States Attorney, 633 U.S. Post Office & Courthouse, Pittsburgh, Pennsylvania 15219, Attorneys for Appellee.

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* Mitchell H. Cohen, United States District Judge for the District of New Jersey, sitting by designation.

Appendix—Judgment Order Dated January 11, 1977.

In this appeal from a judgment of sentence for violations of 18 U.S.C. § 111, 18 U.S.C. § 1501 and 26 U.S.C. § 7212 (a) appellant contends

(1) that the court should have charged the jury that knowledge that the victim is a federal officer is required for a conviction under 18 U.S.C. § 111.

(2) that the court failed to charge the scienter required for conviction under 18 U.S.C. § 1501 and 26 U.S.C. § 7212(a).[1]

(3) that the verdict is not supported by the evidence.

(4) that counts two and three of the indictment involve a single act or transaction and thus violates the double jeopardy provision of the Fifth Amendment.

We find each of these contentions to be without merit.

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed. No costs.

By the Court,

JOHN J. GIBBONS,
Circuit Judge.

Attest

THOMAS F. QUINN,
Clerk.

Dated: Jan 11 1977

[1] The appellant has not furnished a transcript of the court's charge to the jury, and has not replied to the Government's representation, brief p. 10, that a charge in conformance with *United States v. Rybicki*, 403 F.2d 599 (6th Cir. 1968) and *Sparks v. United States*, 90 F.2d 61 (7th Cir. 1937), was in fact given.

Judgment Order Dated January 24, 1977

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 76-2005

UNITED STATES OF AMERICA,
v.
JEFFREY PETER SNYDER,
Appellant.

(D. C. Crim. No. 76-95).

Appeal From the United States District Court for the Western District of Pennsylvania

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Submitted Under Third Circuit Rule 12(6)
January 24, 1977

Before GIBBONS and GARTH, *Circuit Judges,*
and COHEN*, *District Judge.*

Larry P. Gaitens, Esquire, Lucchino, Gaitens & Hough, Suite 1204, Lawyers Building, Pittsburgh, Pennsylvania 15219, Attorney for Appellant.

Blair A. Griffith, United States Attorney, John Paul Garhart, Asst. United States Attorney, 633 U.S. Post Office & Courthouse, Pittsburgh, Pennsylvania 15219, Attorneys for Appellee.

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* Mitchell H. Cohen, United States District Judge for the District of New Jersey, sitting by designation.

In this appeal from a judgment of sentence for violations of 18 U.S.C. § 111, 18 U.S.C. § 1501 and 26 U.S.C. § 7212(a) appellant contends:

(1) that the court should have charged the jury that knowledge that the victim is a federal officer is required for a conviction under 18 U.S.C. § 111.

(2) that the court failed to charge the scienter required for conviction under 18 U.S.C. § 1501 and 26 U.S.C. § 7212(a).

(3) that the verdict is not supported by the evidence.

(4) that counts two and three of the indictment involve a single act or transaction and thus violates the double jeopardy provision of the Fifth Amendment.

We find each of these contentions to be without merit.

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed.

By the Court,

JOHN GIBBONS,
Circuit Judge.

Attest

THOMAS F. QUINN,
Clerk.

Dated: Jan 24 1977